

UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF MICHIGAN

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Plaintiffs,

v

Case No. 2:10-cv-14181-JAC-VMM  
Hon. Julian A. Cook  
Magistrate Judge Virginia M. Morgan

STATE STREET BANK AND TRUST  
COMPANY, a Massachusetts Trust Company,  
DAIMLER AG, a foreign corporation,  
THOMAS LASORDA, an individual,  
JOHN DOE and MARY ROE, individuals,

Defendants.

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### **FIRST AMENDED COMPLAINT**

NOW COME the above-named Plaintiffs, by and through their attorneys, the Law Offices of Sheldon L. Miller and Morganroth & Morganroth, PLLC, and for their First Amended Complaint state as follows:

### **PARTIES, JURISDICTION AND VENUE**

1. Many of Plaintiffs are residents of various cities of the State of Michigan and various counties, including cities and counties within this judicial district.

2. Defendant, Daimler AG (“Daimler”), is a stock corporation organized under the laws of the Federal Republic of Germany, which is conducting business in the State of Michigan, and within this judicial district.

3. Defendant, State Street Bank and Trust Company (“State Street”), is a Massachusetts Trust Company, which transacts business in the State of Michigan, and within this judicial district.

4. Defendant, Thomas Lasorda, is a resident of Michigan, and acted as a director and officer of DaimlerChrysler Corporation, which had its principal place of business in the State of Michigan within this judicial district.

5. Defendants, John Doe and Mary Roe, were directors, manager, trustees or other officers of DaimlerChrysler Corporation and Chrysler LLC, which had their principal places of business in the State of Michigan within this judicial district.

6. Subject matter jurisdiction is proper in this Court pursuant to 29 U.S.C. § 1132(e)(1) and 28 U.S.C. § 1331.

7. Venue is proper in this court pursuant to 29 U.S.C. § 1132(e)(2) and 28 U.S.C. 1391(b)(2) because a substantial part of the events and omissions giving rise to the claim occurred within this judicial district.

8. Plaintiffs bring this action on behalf of themselves and all other similarly situated participants of the Chrysler Supplemental Executive Retirement Plan consolidated as of October 1, 1996 (“SRP”) pursuant to Rule 23 of the Federal Rules of Civil Procedure.

9. Upon information and belief, there are numerous members of the proposed class, making joinder of all members impracticable.

10. There are common questions of law and fact affecting the rights of the members of the proposed class.

11. Plaintiffs' claims are typical of the claims of the other members of the class, and Plaintiffs will fairly and adequately represent the interests of the class.

12. This action is properly maintainable as a class action pursuant to Rule 23(b)(1) because prosecuting separate actions by individual class members would create a risk of inconsistent adjudications and/or such individual adjudications would be dispositive of the interests of the other members of the proposed class not parties to the individual adjudications.

13. This action is properly maintainable as a class action pursuant to Rule 23(b)(2) because Defendants have acted on grounds that apply generally to the entire proposed class thereby making declaratory relief as to the rights of the proposed class as a whole appropriate under the circumstances.

14. This action is properly maintainable as a class action pursuant to Rule 23(b)(3) because there are questions of fact and law common to all members of the proposed class which predominate over any questions unique to individual members of the proposed class, and a class action is superior to other methods of adjudication.

### **COMMON ALLEGATIONS**

15. Plaintiffs are all former employees of the Chrysler Corporation ("CC") and/or DaimlerChrysler Corporation, and/or their partially or wholly owned subsidiaries and were employed by the same prior to 2007.

16. In 1998, CC agreed to merge with Daimler-Benz AG ("DBAG"), which was the former name of Daimler, to form a new company, Daimler Chrysler AG ("DCAG").

17. As a part of the merger, CC was renamed DaimlerChrysler Corporation (“DCC”), and became a wholly-owned subsidiary of DCAG.

18. Under the plan of merger, DCC became the employer of CC’s employees, including Plaintiffs.

19. On August 3, 2007, DCAG sold a majority interest in DCC to Cerberus Capital Management, L.P. (“Cerberus”) and the company became known as Chrysler LLC.

20. Following the sale, DCAG changed its name to Daimler AG (“Daimler”).

21. On April 30, 2009, Chrysler LLC filed for bankruptcy protection.

22. When Chrysler LLC emerged from the bankruptcy proceeding, neither Daimler nor Cerberus held any interest in the new company, which was now jointly owned by Fiat SpA, the United Auto Workers of America, and the governments of the United States and Canada (“Chrysler Group LLC”).

23. While employed by CC and/or DCC, Plaintiffs were participants in the SRP, which was an employee benefit plan providing retirement benefits to eligible employees.

24. The SRP was a non-qualified pension plan under the Internal Revenue Code, and as such, was not federally insured by the United States Pension Benefit Guaranty Corporation.

25. Under the terms of the SRP, Plaintiffs were entitled to receive a monthly payment from the SRP upon their retirement.

26. A Rabbi Trust was established by CC pursuant to a written trust agreement between CC and State Street and Other Fiduciaries in order to: (1) provide for the payment of SRP retirement benefits; (2) reimburse CC for payments of SRP retirement benefits made directly to SRP participants; and (3) provide for payment of the expenses associated with the administration of the Rabbi Trust.

27. The Rabbi Trust was administered by Defendant State Street and Defendants Zetsche, Lasorda (a member of DCC's board of directors), John Doe and Mary Roe (who consist of members of an Employee Benefits Committee, a Pension Fund Review Committee, a Compensation Committee and/or the Board of Directors whose identities are presently unknown to Plaintiffs) (hereinafter referred to as the "Other Fiduciaries"), with the consent, approval and guidance of Daimler.

28. Had the Rabbi Trust been fully funded as required by Sections 3.1.1 and 3.1.2 of the Rabbi Trust, there would have been sufficient assets in the Rabbi Trust to securitize the SRP retirement benefits of all SRP participants at any given time between 1998 and the time that Chrysler LLC filed for bankruptcy.

29. Upon information and belief, when Cerberus acquired a majority interest in DCC, the Rabbi Trust had assets in excess of \$200 million.

30. At the time of Chrysler LLC's bankruptcy, the Rabbi Trust had a mere \$117,163 in assets remaining.

31. Upon information and belief, the approximately \$200 million that was removed from the Rabbi Trust between August 2007 and the time that Chrysler LLC filed for bankruptcy was used for impermissible purposes in violation of Sections 2.1 and 3.2 of the Rabbi Trust.

32. From 2005 through the time that Chrysler LLC filed for bankruptcy, Defendants all knew or believed that DCC/Chrysler LLC was suffering serious financial difficulties and was in danger of filing for bankruptcy.

33. Defendants knew that if DCC/Chrysler LLC filed for bankruptcy protection, the assets in the Rabbi Trust would become part of the bankruptcy estate and be subject to the claims of unsecured creditors.

34. In 2005 and/or 2006, LaSorda and the Other Fiduciaries decided to institute a practice of purchasing annuities, providing lump sum payments, transferring benefits to a qualified retirement plan, or otherwise securitizing the SRP retirement benefits of participants in the plan who were at that time still actively employed by DCC, including themselves.

35. By converting some of the assets of the Rabbi Trust into annuities, providing lump sum payments, transferring benefits to a qualified retirement plan, or otherwise securitizing SRP retirement benefits, those assets were protected from becoming part of the bankruptcy estate, and the active employees that received the annuities, lump sum payments, transfers of benefits to a qualified retirement plan, or other securitization of SRP retirement benefits, would be able to receive all or a major portion of their SRP retirement benefits even if DCC/Chrysler LLC filed for bankruptcy.

36. LaSorda and the Other Fiduciaries acted to protect the SRP retirement benefits of only the actively employed SRP participants, including themselves.

37. Defendants did not purchase annuities or otherwise securitize all of the SRP retirement benefits payable to the vast majority of the former employees of CC and DCC eligible to receive SRP retirement benefits, including Plaintiffs.

38. Plaintiffs were excluded from the purchase of annuities, lump sum payments, transfer of benefits to a qualified retirement plan, or other securitization of the SRP retirement benefits.

39. This action to buy annuities, provide lump sum payments, transfer benefits to a qualified retirement plan, or otherwise securitize SRP retirement benefits for only the actively employed SRP participants was presented to and approved by the DCAG Board of Management in Germany.

40. Upon information and belief, Defendants' practice of securitizing the SRP retirement benefits of actively employed SRP participants continued until the time of Chrysler's bankruptcy.

41. As a group, Plaintiffs were older than the group of SRP participants whose retirement benefits were securitized.

42. Upon information and belief, the assets of the Rabbi Trust were improperly used for the operational expenses of Chrysler LLC and/or its subsidiaries, contrary to the terms of the Rabbi Trust and in derogation of the rights of Plaintiffs, who were participants in the SRP.

43. Upon information and belief, the assets of the Rabbi Trust were also used to fund buyouts and other corporate obligations to certain executives of Chrysler, LLC, contrary to the terms of the Rabbi Trust.

44. The participants in the SRP, including LaSorda and the Other Fiduciaries whose benefits had been protected by annuities, lump sum payments, transfers to a qualified retirement plan or otherwise securitized prior to Chrysler LLC's bankruptcy did not lose their SRP retirement benefits as a result of the bankruptcy.

45. Had Defendants purchased annuities, provided lump sum payments, transferred benefits to a qualified retirement plan, or otherwise securitized the SRP retirement benefits for all of the participants in the SRP, Plaintiffs would have received their SRP retirement benefits, and would not have lost them as a result of the bankruptcy.

46. Those Plaintiffs who had reached the age of 62 prior to May 1, 2009, and who had been receiving monthly retirement benefits from the SRP, received their last SRP payment on April 1, 2009.

47. Those Plaintiffs who had not reached the age of 62 prior to April 2009 continued receiving SRP retirement payments from Chrysler Group LLC, but have been informed that their SRP retirement benefits would stop when they reach the age of 62.

**COUNT I - Age Discrimination against All Defendants**

48. Plaintiffs reallege and incorporate paragraphs 1-47 of their First Amended Complaint as if same were set forth word for word herein.

49. As a whole, Plaintiffs were much older than the group of SRP participants whose SRP retirement benefits were annuitized, paid in a lump sum, transferred to a qualified retirement plan and/or otherwise securitized by Defendants.

50. State Street and the Other Fiduciaries were agents of DCC and Chrysler LLC and were charged by DCC and Chrysler LLC with the responsibility of administering the SRP.

51. Defendants owed a duty to Plaintiffs to refrain from discriminating against them in terms of their compensation and privileges of employment on the basis of age pursuant to the Elliott Larsen Civil Rights Act (“ELCRA”), M.C.L. § 37.2202(1)(a) and the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. § 621 et seq.

52. Participation in the SRP was a privilege and benefit afforded to Plaintiffs as a result of their employment at CC and DCC and was part of their overall compensation package.

53. Defendants decided to institute a practice of securitizing the SRP retirement benefits of only actively employed participants of the SRP.

54. Defendants’ decision to securitize only SRP retirement benefits of only the actively employed SRP participants had the effect of discrimination against Plaintiffs on the basis of age, and was therefore wrongful and in violation of the ELCRA and the ADEA.

55. As a direct and proximate result of Defendants' discriminatory acts, Plaintiffs have suffered damages, including but not limited to, loss of benefits, mental distress and attorney fees.

WHEREFORE, Plaintiffs pray that this Honorable Court enter judgment in their favor against Defendants in an amount that is fair and just in excess of \$75,000.00, plus exemplary damages, interest, costs and attorney fees.

**DEMAND FOR A TRIAL BY JURY**

NOW COME the above-named Plaintiffs, by and through their attorneys, the Law Offices of Sheldon L. Miller and Morganroth & Morganroth, PLLC, and hereby demands a trial by jury in the above entitled matter.

Respectfully submitted,

MORGANROTH & MORGANROTH, PLLC

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Dated: August 30, 2013

**CERTIFICATE OF SERVICE**

I hereby certify that on August 30, 2013, I have filed the foregoing First Amended Complaint electronically with the Clerk of the Court using the ECF system which will send electronic notification of such filing to all counsel of record.

MORGANROTH & MORGANROTH, PLLC

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